



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2004

Ms. Zandra L. Narvaez
Attorney
City of Public Service of San Antonio
P. O. Box 1771
San Antonio, Texas 78296-1771

OR2004-2241

Dear Ms. Narvaez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198013.

The City Public Service of the City of San Antonio ("CPS") received a request for the following information: (1) the proposed capital and operating budgets for CPS for fiscal year 2004-2005 and documents reflecting comparisons of that proposed budget to the current budget year; (2) costs and expenses relating to certain identified portions of the proposed capital budget for fiscal year 2004-2005 and any documents reflecting comparisons; (3) the salaries, bonuses, and incentives for six identified positions for the current and proposed budget years; (4) certain specified minutes or other documents which reflect the votes of the members of the CPS board; and (5) minutes or other documents which reflect the results of any votes taken by the CPS board pursuant to section 551.086 and 55.131 of the Government Code and the dates on which such votes were taken. You state that you have released information responsive to items (1), (2), (4), and part of (3) to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.104, and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also reviewed comments submitted on behalf of the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information another statute makes confidential. You state that the information responsive to item (5) of the request consists of certified agendas of the CPS Board of Trustees' ("board") closed executive sessions. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is

available for public inspection and copying *only under a court order* issued under Subsection (b)(3).” (Emphasis added.) Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). After reviewing the submitted information, we find no indication that the requestor has presented the city with a court order requiring disclosure of the certified agenda. Therefore, CPS must withhold the certified agendas from public disclosure under section 552.101 in conjunction with section 551.104(c) of the Government Code.

Section 552.133 of the Government Code excepts from disclosure a public power utility’s information related to a competitive matter. Section 552.133(b) provides:

Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Gov’t Code § 552.133(b). Section 552.133(a)(3) defines a “competitive matter” as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility’s competitive activity, and the release of which would give an advantage to competitors or prospective competitors. However, section 552.133(a)(3) also provides thirteen categories of information that may not be deemed competitive matters. The attorney general may conclude that section 552.133 is inapplicable to the requested information only if, based on the information provided, the attorney general determines the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. Gov’t Code § 552.133(c).

The attorney for the requestor asserts that the requested information is not reasonably related to a competitive matter. In this regard, we reiterate that section 552.133 defines a “competitive matter” as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility’s competitive activity, and the release of which would give an advantage to competitors or prospective competitors. Gov’t Code § 552.133(a)(3). Thus, section 552.133 allows the public utility to determine which utility matter constitutes a competitive matter by taking a vote on such matters and then passing a resolution setting forth such competitive matters. This office must determine if the submitted information relates to the competitive matter as defined by the resolution passed

by the public power utility governing body. This office must also ensure that requested information does not fall within any of the thirteen categories of information that may not be deemed competitive matters. *See* Gov't Code § 552.133(a)(3).

In this case, CPS states that “[t]he CPS Board of Trustees, acting pursuant to section 552.133 of [the] Act, passed a resolution determining in good faith that information regarding executive pay and perquisites beyond what [is] required to be disclosed by SEC regulations for investor owned utilities is a ‘competitive matter.’” CPS further states that “[t]he CPS board, in its resolution on competitive matters, has specifically described the rationale for considering executive pay and perquisites as competitive information: [executive salary and perquisites] could allow competitors to assess potential efforts to attract key CPS employees.” CPS has submitted a copy of the resolution for our review. After reviewing CPS’s arguments and the submitted information, we conclude that this information is reasonably related to a competitive matter as defined by the resolution. The requested information is not among the thirteen categories of information expressly exempted from the definition of competitive matter, and based on the information provided in connection with this request, we cannot conclude that the board failed to act in good faith. Thus, because we cannot conclude that the board failed to act in good faith in determining that the category of information responsive to the present request is a “competitive matter,” and because the remaining information responsive to item (3) of the request is reasonably related to this competitive matter in accordance with the board’s resolution, we conclude that this information is excepted from disclosure pursuant to section 552.133 of the Government Code.¹

In summary, we conclude: (1) CPS must withhold the certified agendas from public disclosure under section 552.101 in conjunction with section 551.104(c) of the Government Code, and (2) the information responsive to the remaining portion of item (3) of the request is excepted under section 552.133 of the Government Code. As you raise no exception to the disclosure of the remaining submitted information, it must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

¹Because our ruling is dispositive, we need not address your claim under section 552.104 of the Government Code.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 198013

Enc. Submitted documents

c: Mr. David Luricella
San Antonio Express-News
P. O. Box 2171
San Antonio, Texas 78297
(w/o enclosures)